IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 552 OF 2004

Mr. Jose Antonio Tito
Vas, House No.825,
Porta Waddo, Siolim,
Bardez, Goa. .. Petitioner

Versus

1. M/s. Dynamic Builders,
a partnership firm having
its office at City Centre,
Mapusa, Bardez, Goa,

2. Mr. Elvino Francis D'Souza,
Green Valley Apartments,
Ground Floor, Peddem,
Bardez, Goa,

3. Mr. Joseph Rogerio Assis
D'Silva, Portais, Verem,
Bardez, Goa,

4. Mr. Madhukar Datta Nagvekar,
Cobra Vaddo, Calangute,
Bardez, Goa, and

5. Mrs. Vimal Madhukar
Nagvenkar, Cobra Waddo,
Calangute Bardez, Goa. ..Respondents.

Mr. S. M. Singbal, advocate for the petitioner.

Mr. M. B. D'Costa, Senior Advocate with Mr. J.A. Lobo, advocate for respondent nos.1,2 and 3.

Mr. S. Vahidulla, Advocate for respondent nos.4 and 5.

CORAM : A. P. LAVANDE, J.

DATE : 27th January, 2005.

ORAL ORDER

Heard Mr. Sonak, learned counsel for the petitioner, Mr. M. B. D'Costa, learned counsel for respondent nos.1 to 3 and Mr. Vahidulla, learned counsel for respondent nos.4 and 5. By this petition the petitioner, who is the original plaintiff in Special Civil Suit No.160/96, which has been renumbered as Regular Civil Suit No.505/2000/Jr./II, takes exception to the order dated 28th October, 2004, passed by the trial Judge dismissing the application filed by the petitioner dated 14th January, 2004. By the said application, the petitioner prayed that the affidavit in evidence dated 2nd August, 2004, sworn by the plaintiff's attorney be permitted to be replaced by the affidavit in evidence dated 14th January, 2004, sworn by the plaintiff himself.

2. In the above mentioned suit, the petitioner/plaintiff filed affidavit in evidence of the attorney of the plaintiff on 2nd August, 2003. Thereafter, at the instance of the plaintiff, the matter was adjourned on two occasions. On 14th January, 2004, the plaintiff filed an application praying that the affidavit in evidence dated 2nd August, 2003, sworn by the plaintiff's attorney be permitted to be replaced by the affidavit in evidence dated 14th

January, 2004, sworn by the plaintiff himself. After hearing the parties, the trial Court by Order dated 28th October, 2004 dismissed the application. The trial Court held that the plaintiff had not placed anything on record to show that he was out of India.

3. Mr. Singbal, learned counsel appearing for the petitioner submits that the impugned order is contrary to law and further submits that if the impugned Order is not set aside the plaintiff will be precluded from examining himself in view of Order XVIII Rule 3-A of the Civil Procedure Code and, therefore, serious injustice would be caused to the plaintiff. Mr. Singbal submitted that liberty be granted to the plaintiff to examine himself after the attorney of the plaintiff is cross-examined by the defendants.

4. Mr. D'Costa, learned Senior Counsel, appearing for respondent nos. 1 to 3 and Mr. Vahidulla, learned counsel appearing for respondent nos. 4 and 5, submitted that no jurisdictional error has been committed by the trial Court while passing the impugned Order. It is further submitted that there is no provision for permitting replacement of affidavit in evidence of the plaintiff's attorney by affidavit in evidence of the plaintiff himself. It is, therefore, submitted that there is no merit in the present petition and, as such, the same be dismissed summarily.

5. I have considered the submissions made by the

learned counsel for the parties. It is well-settled that jurisdiction of this Court to interfere against an interlocutory order passed by the trial Court by exercising writ jurisdiction under Article 226 and/or Article 227 of the Constitution of India is very limited and the parameters of interference have been laid down by the Apex Court in the judgment in the case of ***Surya Dev Rai vs. Ramchander Rai & Ors.,*** reported in (2003) 6 SCC 675 at paragraph 38. Having regard to the parameters laid down in the said Judgment, I am of the opinion that this is not a fit case in which the impugned Order deserves to be set aside in exercise of writ jurisdiction. I am unable to accept the submission of Mr. Singbal that if the impugned Order is not set aside it would amount to the trial Court precluding the plaintiff from examining himself. Having regard to the factual position, it is the plaintiff himself who tendered affidavit in evidence of the attorney. Nothing precluded the plaintiff from filing his own affidavit in evidence and, therefore, I do not find any substance in the submission made by the learned counsel. Naturally in view of Order XVIII Rule 3-A C.P.C. the plaintiff would not be in a position to examine himself unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.

6. In view of the above discussion, I do not find any merit in the present petition and, therefore, the same is summarily

rejected with no order as to costs.

A. P. LAVANDE, J.

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